

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 90 of 1998

WITH

SPECIAL CIVIL APPLICATION NO.93 OF 1998

WITH

SPECIAL CIVIL APPLICATION NO. 94 OF 1998

WITH

SPECIAL CIVIL APPLICATION NO.499 OF 1998

For Approval and Signature:

Hon'ble MR.JUSTICE K.R.VYAS

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?  
1 to 5 No.

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GUJARAT STATE FERTILIZERS & CHEMICALS LTD

Versus

LABOUR COMMISSIONER & COMPETENT AUTHORITY

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Appearance:

SCA 90/98:

Mr. S.I.Nanavati, Senior Advocate with Mr.  
D.G.Shukla, Advocate for the petitioner.  
Mr.Mukesh Patel, AGP, for Respondent No. 1  
Mr. N.R.Sahani, Advocate,for Respondent No. 2  
Mr.R.D.Dave, Advocate for Respondent No. 3, 4, 5

SCA 93/98:

Mr. RD Dave, Advocate for the petitioner  
Mr. Mukesh Patel, AGP for respondent No.1.  
Mr. N.R.Sahani,Advocate for respondent No.2.  
Mr. S.I.Nanavati, Sr. Advocate with Mr.  
D.G.Shukla,Advocate for respondent No.3.

SCA 94/98:

Mr. RD Dave, Advocate for the petitioner  
Mr. Mukesh Patel, AGP for respondent No.1.  
Mr. N.R.Sahani, Advocate for respondent No.2.  
Mr. S.I.Nanavati, Sr. Advocate with Mr.  
D.G.Shukla, Advocate for respondent No.3.

SCA 499/98:

Mr. RD Dave, Advocate for the petitioner.  
Mr. Mukesh Patel, AGP for respondent No.1.  
Mr. N.R.Sahani, Advocate for respondent No.2.  
Mr. S.I.Nanavati, Sr. Advocate with Mr.  
D.G.Shukla, Advocate for respondent No.3.

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CORAM : MR.JUSTICE K.R.VYAS

Date of decision: 01/04/98

#### ORAL JUDGEMENT

Rule. Mr.Mukesh Patel, learned AGP for Labour Commissioner & Competent Authority, Mr. N.R.Sahani, learned Advocate for Gujarat Mazdoor Panchayat, Mr.R.D.Dave, learned Advocate for Deesawala Corporation, Jay Ambe Enterprise and M/s Echjay Construction Co. and Mr. S.I.Nanavati, learned Senior Advocate with Mr. D.G.Shukla, learned Advocate for Gujarat State Fertilizers & Chemicals Ltd., waive service of the Rule in these petitions. At the request of the learned Advocates, these petitions are taken up for final hearing to-day.

Special Civil Application No.90/98 has been filed by the Gujarat State Fertilizers & Chemicals Ltd and Special Civil Applications Nos.93/98, 94/98 and 499/98 have been filed by different contractors challenging the order dated 2-12-1997 passed by the Labour Commissioner and Competent Authority (respondent No.1 in all these petitions) under the Contract Labour (Regulation and Abolition) Act, 1970, holding that the workers employed by the contractors are doing the same and similar type of work as being done by the regular employees of the Company i.e. the Gujarat State Fertilizers & Chemicals Ltd. This order was passed by the first respondent in compliance with the order dated 18-12-89 passed by a Division Bench of this Court in Special Civil Application No. 4429 of 1989 whereby respondent No.1 was directed to look into the grievances in connection with the concerned workmen in light of clause 5 of Licence - Form VI under Rule 25 of the Contract Labour (Regulation & Abolition) (Gujarat) Rules, 1972.

On behalf of the petitioners, it was contended by

Mr. S.I.Nanavati, learned Senior Advocate and Mr. R.D.Dave, learned Advocate that the impugned order was passed by the first respondent without giving opportunity to the petitioners of presenting their case before him. Reading the impugned order, it appears that on 29-9-97, the parties were called and it was decided that the parties will obtain copies of the statements of the workers and thereafter the matter was adjourned to 4-10-97. It is the case of the petitioners that on 4-10-1997, the hearing could not take place on account of non-availability of the first respondent and thereafter the case was adjourned to 20th October, 1997. It is the case of the petitioner-contractors that they had applied two days prior to 20th October, 1997 i.e. on 18th October, 1997 for adjournment of the hearing while it is the case of the petitioner company that the company had orally applied for adjournment. The first respondent, however, rejected the request for adjournment and proceeded with the case on 20th October, 1997 and passed the order on 2-12-1997 on the ground that the case is pending since long and the parties have been afforded opportunities from time to time and in any case two dates were already given to enable the petitioners to come prepared with the case.

It is true that the matter was adjourned on two occasions but the fact remains that the petitioners were not heard. This is particularly in view of the fact that on 29-9-97 it was decided that the parties shall obtain copies of the statements of the workers. There is no dispute that the petitioner company as well as the Union have obtained the copies of the statements. However, the contractors, for any reason, could not obtain the copies of the statements and for that purpose time was sought. Since the impugned order was passed without hearing the petitioners, I am of the opinion that instead of entering into the merits of the case and deciding the question whether the petitioners were justified in asking for time or the respondent No.1 was justified in passing the order, the ends of justice would be met with if the matter is remanded to respondent No.1 with a direction to decide the question afresh after giving opportunities to the parties.

In the result, these petitions are partly allowed. The order dated 2-12-1997 passed by respondent No.1 is quashed and set aside and the matter is remanded to respondent No.1 for fresh decision in accordance with law with the following directions:

1 Respondent No.1 shall hear and decide the matter

afresh after considering the material that may be placed before him and after hearing the concerned parties.

2 All the petitioners shall file their replies with the documentary evidence in support thereof before the first respondent on or before 15th April, 1998 and shall serve the copies of such replies to the concerned parties .

3 The concerned Union shall file rejoinder, if it so desires to file before the 1st respondent within a week from the date of receipt of the replies of the petitioners and shall also serve a copy thereof to the parties.

4 The 1st respondent shall fix the matter for hearing on the date convenient to him and after hearing the parties shall take appropriate decision in accordance with law on or before 15th May 1998.

5 All the parties shall co-operate in the hearing of the matter before the 1st respondent and shall not seek any adjournment, unless it is absolutely necessary.

Rule in each of these petitions is made absolute to the aforesaid extent with costs which is quantified at Rs.2500/- in each of these petitions and the same shall be paid to the respondent-Union before the commencement of the hearing before 1st respondent. D.S.permitted.

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